

California Code of Regulations, Title 10, Chapter 5

Subchapter 3. Insurers

Article 6. Taxation

Section 2330 Guidelines For Waiver of Penalty For Non-Use of Electronic Fund Transfer or For Non-Timely Payment of Taxes

Section 2330.1. Preamble.

Insurers and surplus line brokers (hereafter, “taxpayers”) are required to participate in the Electronic Fund Transfer (“EFT”) program if their annual taxes exceed twenty thousand dollars (\$20,000). If they fail to participate in the program or if their payment is untimely, they will be assessed a ten percent penalty plus interest on the amount due unless the penalty is waived as set forth under Sections 2330.3 and 2330.4. If they fail to participate in the program and also fail to make a timely payment, they will be assessed a twenty percent penalty plus interest on the amount due unless the penalty is waived as set forth under Sections 2330.3 and 2330.4.

Authority: California Insurance Code Section 1775.4(e), 1775.5(b), 1775.8, 12976.5(a), California Revenue and Taxation Code Section 12602(c)(1), 12631, 12636.

Reference: Insurance Code Section 45, California Revenue and Taxation Code Section 12258

Section 2330.2. Definitions.

- (a) “Fedwire Payment” is a wire transfer system used generally to transfer large dollar amounts instantaneously provided by the U.S. Federal Reserve System.
- (b) “Department”, for purposes of these regulations, means the Department of Insurance.

Authority: California Insurance Code Section 1775.8(c), 12976.5(c)(2).

Reference: Insurance Code Section 21, California Revenue and Taxation Code Section 12602(c)(2), 12636.

Section 2330.3. Waiver of Penalty For Failure to Pay Taxes By EFT

(a) The penalty set forth above in Section 2330.1 may be waived if the taxpayer’s failure to pay taxes by EFT is due to reasonable cause or circumstances beyond the taxpayer’s control.

(b) In order for the penalty to be waived, the taxpayer seeking a waiver must file with the Insurance Commissioner a written request under penalty of perjury, stating the facts upon which a request for a waiver is based. Each request for a waiver shall be evaluated on its own merits. If possible, the request should be made at least 10 days prior to the date the payment of taxes is due.

(c) The request for a waiver shall be granted if the taxpayer fails to make payment by electronic fund transfer under any of the following circumstances:

- (1) The death or serious illness of the taxpayer or death or serious illness of a member of the taxpayer's immediate family.
- (2) The death or serious illness of the person who prepares the payment on behalf of the taxpayer.
- (3) Natural disaster.
- (4) Incorrect advice given to the taxpayer by an employee of the Commissioner.
- (5) Involuntary bankruptcy.
- (6) An attachment placed against the taxpayer's bank account without the taxpayer's knowledge.
- (7) The taxpayer's books and records are impounded by court order or are in the hands of a federal or state agency and are unavailable for use by the taxpayer. However, these books and records must pertain to the same period of time as the tax return or somehow relate to the payment of the tax.
- (8) If the State of California does not suffer any financial loss as a result of the payment method and the taxpayer was not previously notified of the electronic fund transfer method. In this case, taxes may be paid via the "Fedwire" or "Check Payment" method and the taxpayer shall work with the Department of Insurance to establish an electronic fund transfer account.
- (9) Other situations that clearly demonstrate that the non-use of EFT is beyond the taxpayer's control.

Authority: California Insurance Code Section 1775.4(e), 1775.5(b), 1775.8(c)(2), 12976.5(c)(2), California Revenue and Taxation Code Section 12602(c)(2).

Reference: California Insurance Code Section 1775.8(c)(2), 12976.5(c)(2), California Revenue and Taxation Code Section 12636.

Section 2330.4. Waiver of Penalty For Failure to Timely Make Payment

- (a) The penalty set forth above in Section 2330.1 may be waived if the surplus line broker failed to make a timely payment under any of the circumstances set forth under Section 2330.3(c)(1) through (7) above. Taxpayers may also be relieved of the penalty for late payment if:

- (1) the taxpayer's failed to receive a tax return because of a change of address and the Department has been properly informed of the change of address.

- (2) for any other reason, the taxpayer has not received a tax return from the Department where the Department is at fault.
- (3) other situations that clearly demonstrate that failure to make timely payment is beyond the taxpayer's control.

Authority: California Insurance Code Section 1775.4(e), 1775.5(b), California Revenue and Taxation Code Section 12602(b)(2).

Reference: California Insurance Code Section 1775.8(c)(3), California Revenue and Taxation Code Section 12636.

Filing for Relief.

(a) Any surplus line broker seeking to be relieved of the penalty provided in Section 2330.1 for failure to pay taxes by EFT and/or failure to timely make a payment shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

(b) Any insurer seeking to be relieved of the penalty provided in Section 2330.1 for failure to pay taxes by EFT shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

(c) Any insurer seeking to be relieved of the penalty provided in Section 2330.1 for failure to timely make a payment shall file with the California Board of Equalization a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

Authority: California Insurance Code Section 1775.4(e), 1775.5(b), 1775.8(b)(2), 1775.8(c)(3), 12976.5(c)(2), California Revenue and Taxation Code Section 12602(c)(3), 12636.

Reference: California Insurance Code Section 1775.4(e), 1775.5(b), 1775.8(b)(2), 1775.8(b)(3), 12976.5(c)(2), California Revenue and Taxation Code Section 12602(c)(3), 12636.